

1 essentially upholds an entitlement that ILBCs claim to toll revenue. When HLCs is created, the
 2 surcharge not only covers costs, but also replaces lost toll revenue, which themselves are
 3 typically well above cost. ILBC basic monthly rates, however, are often below cost, so they
 4 depend on the cross-subsidy from toll, HLCs and other exogenous surcharges. In this case,
 5 however, CenturyTel's HLCs revenue requirement will not change depending on the identity of
 6 the terminating carrier. Its HLCs surcharge will remain the same regardless of whether ASAP
 7 terminates the call or SWBT does.

8 Non-ILBC rates are not regulated. ASAP can essentially set its prices for whatever the
 9 market will bear, and they will almost always be lower than the incumbent. That is certainly the
 10 case here. It is not subject to basic rate regulation, so it has no need for surcharges. If it incurs
 11 costs for HLCs, then it can simply factor those into its rates. In effect its rates are more honest
 12 than those of ILBCs, who can advertise a low basic rate and then apply surcharge upon
 13 surcharge, citing any number of excuses.

14 Q. How does CenturyTel's position with regard to ISP-bound calls comport with the
 15 industry-wide view, and how has this changed?

16 A. CenturyTel appears to be taking part in a multi-carrier initiative to fight "Virtual NXX"
 17 wherever it occurs. But this is just one salvo in a long-running battle between ILECs and ISPs.
 18 Because the Powell FCC has made several pro-ILRC rulings, the ILBCs feel that the momentum
 19 is theirs and that they can begin to push on to try to shut down the independent ISP sector, as
 20 well as the competitive carriers who support them.

21 In 1996, Bell Atlantic and SBC both made ex parte presentations to the FCC, "white
 22 papers", which called for the repeal of the "ISP Exemption". The dial-up Internet was growing
 23 very rapidly, about 5% a month in my experience (at the time, I was performing dial-in traffic
 24 analysis for a client who was supporting the country's largest retail ISP). ILBC terminating
 25 switching systems whose local calling areas were desirable to ISPs were themselves becoming
 26 congested; ILBCs were not accustomed to rapid growth and were ill-prepared to handle it. Some
 27 ISPs also ordered analog circuits from ILBC switches, whose operational cost per minute was
 28 very high, but whose tariff rates were often lower than digital circuits. In essence, the ILBCs
 29 pricing policies were causing cost and service problems. They forecast "doom and gloom" for
 30 their networks if nothing was done. Their response was to try to put the brakes on the Internet in
 31 a hurry by making all calls to ISPs subject to toll access charges.

1 This did not happen, of course. The Telecom Act came out just in time. CLBCs stepped
 2 in and picked up a large share of ISP dial-in traffic. They did this by using high-traffic-capacity
 3 switches, centrally located in metropolitan areas. They relieved the choke points, the switches
 4 serving terminating modems. And in the process, the CLECs basically invented Virtual NXX⁴.
 5 But the ILECs had miscalculated. In the months following the passage of the Telecom Act, they
 6 anticipated that CLBCs would originate more traffic than they terminate. So they demanded
 7 high reciprocal compensation rates. A Bell Atlantic submission even blasted the CLEC's request
 8 for bill and keep as "bluff and keep", and stated that if the rate were too high, then CLBCs would
 9 seek out mostly-income customers such as ISPs. They apparently miscalculated and probably
 10 thought that it was a bluff.

11 So as the Internet grew, CLECs became the net recipients of reciprocal compensation. In
 12 the 1998 time frame the ILECs then started an intense fight against reciprocal compensation for
 13 ISP-bound calls. Most, not all, states (including Texas) sided with the CLECs, and the Kennard
 14 FCC issued only ambiguous compromise rulings. By 2001, however, the balance of power at the
 15 FCC had changed, and the rules were changed to favor the ILBCs; bill and keep is becoming the
 16 norm.

17 The ILECs are now pushing harder. Having rolled back the tide on reciprocal
 18 compensation, they are attacking Virtual NXX. I note, for example, the recent presentation to
 19 the National Association of Regulatory Utility Commissioners (NARUC) by Mike Reed of TDS,
 20 calling on regulators to help stamp out VNXX. I also saw a recent call for a consultant to make
 21 an anti-VNXX presentation to an ILEC meeting this coming winter. And I note many anti-
 22 VNXX initiatives being taken by ILECs around the country, state by state. They have filed
 23 petitions in several states, including a recent one in Oregon.

24 Unmetered Internet dialup access itself seems to be in jeopardy, first in rural and small
 25 markets, and then nationwide, as the ILECs continue to dream about rolling back the ISP
 26 exemption. The ILBCs want a metered Internet via their captive ISP. No CLECs or alternative
 27 telecommunications service providers. No independent ISPs. All toll. This, in my opinion
 28 would be a Bad Thing. CenturyTel's efforts in this case are another skirmish in the coordinated

⁴ I note, however, that Southern New England Telephone, SBC's Connecticut ILEC, operates an "offload" switch of its own, in New London, which provides, in effect, virtual NXX service to the entire state. This service has been quite competitive; CLBCs have a smaller share of the ISP business in Connecticut than in nearby states.

1 ILBC scheme to control the Internet and eliminate telecommunications competition. But it is
 2 vitally important to ASAP and to its customers.

3 Q. Do you have any concluding remarks?

4 A. I have shown in this Rebuttal that CenturyTel's claim that it should be allowed to assess
 5 its users toll charges or require ASAP to enter a reverse billing arrangement is inconsistent with
 6 industry practice and regulatory precedent. I have also explained that the services provided by
 7 ASAP to both customers "who carry a pager" and to ISPs should not be subject to punishment by
 8 imposition of a toll. ASAP's services fulfill a public need and advance the public interest.
 9 ASAP's network configuration and indirect interconnection with CenturyTel do not impose
 10 unreasonable costs on CenturyTel in relation to the cost if some other ILBC provides service to
 11 the called party. ASAP's network configuration and present interconnection are efficient to all
 12 concerned. CenturyTel's actions and positions in the face of these facts are typical: cutaway
 13 competition using any means possible; failing that, render it noncompetitive by forcing payment
 14 of taxes in the form of non-cost based charges.

15 The Commission should rule that CenturyTel must route calls to ASAP's Lockhart, Kyle
 16 and Features NXXs and honor the rating as published in the LERG, thereby allowing San Marcos
 17 callers the ability to reach ASAP's customers without paying long distance.

18 Q. Does this conclude your Rebuttal Testimony?

19 A. Yes.

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BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXASPRE-FILED REBUTTAL TESTIMONY OF TED GAETJEN

14 Q: PLEASE STATE YOUR NAME, TITLE AND EMPLOYER.

15 A: My name is Ted Gaetjen. I am President of ASAP Paging, Inc. ("ASAP"), the
 16 Complainant in this case.17 Q: ARE YOU THE SAME TED GAETJEN THAT PROVIDED DIRECT TESTIMONY IN
 18 THIS CASE?

19 A: Yes.

20 Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

21 A: I will address several issues discussed by CenturyTel's witness who filed Direct
 22 Testimony and Staff witness Kolesaw. In summary, I will show that CenturyTel's position is in
 23 large part based on wholesale misstatements or misunderstanding of the pertinent facts. Once the
 24 Commission understands the true nature of the issue, and focuses on the most important issue
 25 that it can resolve, it will be clear that CenturyTel is simply wrong. The debate ultimately
 26 devolves into a very simple question: is ILCS available only when an ILBC customer calls
 27 another ILBC customer? In other words, are customers who choose to use alternative providers
 28 or call customers of alternative providers going to pay extra? If using an alternative provider
 29 necessarily results in higher charges than when ILBCs provide both ends of a call, there will be
 30 no competition. Extended local calling cannot be limited to the ILBCs. CenturyTel is essentially
 31 claiming it can charge its users long distance when they call a user of any non-ILBC even if the
 32 number the CenturyTel user dials is "local" to San Marcos and both the calling and called parties
 33 are physically located in San Marcos.¹

¹ To understand this, imagine an ASAP customer with a Lockhart NXX who lives in San Marcos and benefits from her home phone. CenturyTel insists it can impose toll for this call.

1 ASAP is not seeking a preference. ASAP is not engaging in arbitrage. ASAP is not
 2 doing anything that is wrong or illegal. We are merely trying to compete and provide important
 3 communications services. The PUC must continue to enforce its pro-competitive policies and
 4 require CenturyTel to accept ASAP as a co-provider for "local" ELCS calls to ASAP's Lockhart,
 5 Kyle, Fentress and San Marcos NXXs.

6 Q: IS ASAP A REAL PAGING CARRIER?

7 A: CenturyTel's testimony seems to imply that ASAP is not a "real" CMRS carrier.² To the
 8 extent CenturyTel intended to do so, this is simply untrue. ASAP has paging licenses. We
 9 operate an extensive network in the Austin LATA, with approximately 25 transmitters. We have
 10 many retail or wholesale paging customers, including governmental entities, doctors and large
 11 corporations. The great majority of the customers to whom we assign the NXXs in issue are
 12 physically located in San Marcos, Kyle, Lockhart and/or Fentress at least some of the time, or
 13 have some legitimate reason to need a pager with a number that is "local" to those towns. Mobile
 14 service is mobile, yet CenturyTel is basically attempting to turn mobile service into long distance
 15 so that it can charge either access or toll to those who have the temerity to call someone who has
 16 contact with a competitor of CenturyTel. The FCC, however, has already ruled that mobile
 17 service is not long distance service. The FCC has already ruled that CMRS providers are co-
 18 carriers and are not ILCOs.³ The FCC has ruled that calls within an MTA are "local" for inter-
 carriers and are not ILCOs.⁴

² CenturyTel witness Robinson, to his credit, expressly disclaimed any such implication during his deposition.

³ Memorandum Opinion and Order, In the Matter of MTS and WAIS Market Structure, FCC 84-36, ¶¶ 145-146, CC Docket 75-72, ¶¶ FCC2d 134, 823-833 (Feb. 1986).

146. In neither the Access Charge Order nor the Recalibration Order did we explicitly
 address the status of RCOs under Part 69. A review of those Orders and the access charge rules,
 however, makes clear that we did not intend that access charges filed in compliance with Part 69
 be imposed upon RCOs providing cellular mobile services in particular, or two-way mobile and
 paging services generally. This conclusion is applicable to all carriers in the public mobile
 services.

148. The remaining question is whether RCOs are interexchange carriers for purposes of Part
 69. The RCOs provide "exchange service" under Sections 20(b) and 22(d)(b) of the Communications
 Act, and we have consistently treated the mobile radio services provided by RCOs and telephone
 companies as local in nature. (Witness telephone company, RCOs provide interstate services only to the extent that their facilities may be used to originate or

1 carrier purposes and that calls between NXXs that are both associated with the same local calling
 2 area are "local" for retail purposes, especially when the ILEC does not transport the call outside
 3 of the originating area. Only if the calling user dials an NXX that is not "local" can it be
 4 assessed toll. If the ILEC transports the call outside of the local calling area, it can recover the
 5 transport costs.⁴

6 We have a substantial amount of traffic that no one – even CenturyTel – could credibly
 7 claim is not local for both retail and inter-carrier purposes if you look at the physical location of
 8 the calling and called parties. We have traffic from San Marcos to users who are indisputably
 9 physically present in San Marcos, Lockhart, Kyle and/or Fentress. ASAP is a real carrier, with
 10 real facilities and real customers.⁵ While there may be some legitimate dispute over the "ISP
 11 issue" no one can assert in good faith that ASAP is a "sham" CMRS carrier.

12 RBCs are prone to falsely claim that a competitor is not a "real" carrier when that carrier
 13 is successful and procures business the ILEC otherwise would have. In this case, CenturyTel
 14 may be claiming that ASAP is not a "real carrier" because ASAP managed to provide service to
 15 an ISP that CenturyTel used to serve. If ASAP is not a real carrier because it provides
 16 connections to ISPs, then CenturyTel is subject to the same charge. The fact that ASAP may
 17 provide connections to ISPs, however, does not in any way detract from the fact that ASAP is
 18 licensed to – and does – provide paging service to a number of "real" customers "who carry a
 19 pager" in Fentress, Kyle, Lockhart and San Marcos.

20 The issue is not whether ASAP is "real"; apparently ASAP is "real" enough to have
 21 drawn CenturyTel's ire. The issue is whether ILCOs can use their continued dominance and
 22 larger customer base as a tool to bludgeon and harm nascent competition. CenturyTel provides

terminating toll calls. We conclude that they are not and should not be treated as interexchange
 carriers under Part 69.

⁴ See, 47 C.F.R. § 51.701(b)(2) (interMTA calls are "local" for intercarrier compensation purposes); TSI ¶¶ 30-31; Memorandum Order on Review ¶ 5 (If "ILEC and user makes a call from one local calling area to a paging customer whose residence is assigned to a central office in another local calling area of the ILEC, the ILEC may assess the caller the appropriate toll").

⁵ For example, ASAP has 48 numbers in use in the Lockhart NXX. Of these only 5 are used by ISPs. The
 remaining 43 are for or in support of persons who "carry a pager." We would have 35 more of these numbers in use,
 except that we had to move those customers over to our "LATA-wide" 222 NXX in order to keep them as customers
 when CenturyTel began charging toll on April 1, 2002.

1 basic service to most of the people who call my customers (and even a good number of my
 2 customers). CenturyTel can make life difficult for me and my customers by taxing ~~its~~ customers
 3 when they call my customers. The real issue, therefore, is whether an ILEC can charge toll on its
 4 own users when they call a number associated with a rate center that is "local" or ELCS to its
 5 customers. CenturyTel is essentially claiming it can charge toll because ASAP is not an ILEC.

6 Q: BUT DOESN'T CENTURYTEL SAY ASAP HAS ALTERNATIVES THAT WILL
 7 AVOID RETAIL TOLL CHARGES FOR CALLS TO YOUR KYLE, FENTRESS AND
 8 LOCKHART NUMBERS?

9 A: They make this claim, but careful examination shows that these "alternatives" are largely
 10 illusory and are in any event purposely costly, inefficient and do not account for the fact that we
 11 are a wireless carrier with a different kind of network. Further CenturyTel forgets that the FCC
 12 has already ruled that CMRS providers, not ILECs, have the right to determine their network
 13 design and the way that they interconnect with the PSTN.⁶ CenturyTel forgets that the FCC has
 14 ruled that CMRS providers are co-carriers and are not subject to access charges for calls that
 15 originate and terminate in a local calling area. CenturyTel ignores the FCC's explicit recognition
 16 that wireless carriers can get "local" numbers based on, among other things, the business or

⁶ Memorandum Opinion and Order, In the Matter of William G. Bowles Jr., P.E. d/b/a Mid Missouri
 Multiplex, Complainant, v. United Telephone Company of Missouri, File No. B-94-04, DA 97-1441 ¶ 5 (Rel. July,
 1997); Memorandum Opinion and Order, In the Matter of the Need to Promote Competition and Efficient Use of
 Spectrum for Radio Common Carrier Service, FCC 96-63, 59 Rel. Rep. 2d (R&P) 1273, Appendix B: FCC Policy
 Statement on Interconnection of Cellular Systems.

2 ...A cellular carrier is entitled to reasonable interconnection, the form of which depends
 upon the cellular system design and other factors; in some cases the interconnection of a cellular
 system as an end office (Type 2) may be most appropriate, and in others, interconnection as a PEX
 (Type 1) may be best. 86 FCC2d at 496. A cellular system operator is a common carrier, unless
 that a customer or end user, and as such is entitled to interconnection arrangements that
 "minimize unnecessary duplication of switching facilities and the associated costs to the end user."
 Id. Underlying these policies, the Commission stated, was the goal of interconnection
 arrangements most favorable to the end user.

3 Both Telecommunications and CIMA take the position that the cellular carrier should be
 permitted to choose the type of interconnection, Type 2 or Type 1, and that a telephone company
 should not refuse to provide the type of interconnection requested. We agree.

The FCC expressly applied the Policy Statement to paging services in the same proceeding in a Memorandum
 Opinion and Order on Reconciliation, FCC 89-60, ¶¶ 43-47, 4 FCC Rep 2369, 2375-76 (Rel. Feb. 1989).

1 residence of the wireless customer and thereby ensure that end users calling those numbers do
 2 not pay toll.⁷

3 I will go through each of the supposed alternatives in a moment, but a single example
 4 most clearly demonstrates my point. CenturyTel witness Robinson asserts on page 8 and
 5 elsewhere in his testimony that ASAP "has no physical presence or interoffice trunking in the
 6 geographic areas where these NPA-NXXs are 'designated'." He is simply wrong on several
 7 counts.

8 First, ASAP has customers in each of those areas. CenturyTel may be claiming that since
 9 I can't prove that customer A was physically present in San Marcos when a San Marcos caller
 10 paged him, then CenturyTel has the right to impose toll. This is simply not the rule. Does the
 11 phone company get to charge long distance if I call a user's home and that user happens to be
 12 physically absent from the local area at the time? No. In fact, CenturyTel is not saying the user
 13 has to be physically present in the local calling area. It is saying the device that systems does. I
 14 cannot demonstrate that each of my "pages" is physically present in the area at any particular
 15 moment, but that is the nature of "paging" service. Unlike cell phone service, paging units do
 16 not intercommunicate with transmitters, so it is not possible to locate the unit at any time. The

⁷ Notice of Proposed Rulemaking, In the Matter of Numbering Resource Optimization, FCC 99-122, ¶¶ 111-
 112, note 174, 14 FCC Rep. 1652216570-71 (Rel. June, 1999).

111. Rate centers are telephone company-designated geographic locations which are assigned
 vertical and horizontal coordinates within an area code. See ¶¶ 112. Historically, telephone numbers
 are assigned on an NXX code basis and associated with a particular switch. For toll rating
 purposes, each switch is associated with a particular rate center. For local number billing purposes,
 the rate center associated with the switch serving the calling and called parties are used to
 determine whether a call is local or toll and to compute the air-mile distance for rating the toll call.
 Toll rate center billing systems rely on NPA-NXX code information for rating calls.

112. Because it is typically necessary for each facility-based service provider to be assigned
 an NXX code for each rate center in which it provides service, the rate center structure places a
 great strain on numbering resources. Moreover, although wireless carriers require fewer NXX
 codes for the wireless service, they often must request as many NXX codes as are required to
 permit wireless customers to be called by wireless customers on a local basis. See ¶¶ 113
 Note 171. ... Inconsistent local exchange carrier chose to establish the rate center structure as part
 of their network design for billing and pricing functions and no regulatory mandate requires its
 existence.

Note 174. (citation omitted) Wireless carriers, however, often require fewer NXX codes than
 wireless carriers because they have larger local service areas. (citation omitted) We note that, to
 enable the rating of incoming wireless calls as local, wireless carriers typically associate NXXs
 with wireless rate centers that cover either the business or residence of end-users. ...

1 FCC obviously knows this, but it has never held that because one cannot locate the unit all calls
 2 to it are assumed to be toll. Yet that is the result of CenturyTel's position.

3 Second, ASAP has a physical presence in each of those areas. ASAP has a carrier
 4 network. We have transmitters in each area, and connections to them. This is presence.
 5 CenturyTel's position appears to be that it can charge toll unless the co-carrier is an incumbent
 6 with a wholly wireline network. This is not the rule.

7 Third, Mr. Robinson clarified in his deposition that his testimony really meant that ASAP
 8 must have a point of interconnection, paging terminal or switch in each of these areas in order to
 9 qualify for "local" calling.⁸ But wireless networks don't need a switch in every local calling
 10 area. A single switch or paging terminal can easily support many local calling areas. ASAP's
 11 network does. The location of the switch does not determine rating. CenturyTel's demand that
 12 we have duplicative switching equipment and extensive landline connections is grossly
 13 anti-competitive. The demand for a POI as an alternative has no purpose other than to increase
 14 alternative carriers' costs, contrary to the FCC rules.

15 CenturyTel's focus on the point of interconnect is similarly misplaced. In the first place,
 16 as will be discussed below, CenturyTel is wrong about the location of the POI between
 17 CenturyTel and ASAP.⁹ But regardless of the theoretical location of this point, the POI does not
 18 determine the rating for a call. The rating does not determine the rating of a call. The location
 19 of a switch does not determine the rating of a call. The industry has always used the originating
 20 and terminating NXXs to determine rating. And CenturyTel consistently ignores the fact that the
 21 FCC has said a carrier can have a single point of interconnect in the LATA. CMRS carriers can
 22 use Type 2A or "tandem" interconnection. A tandem serves many end offices, and it is usual for

⁸ He bases this on an interpretation of the CO Code Guidelines. He essentially says a carrier can only get NXXs for a particular rate center if it has a switch or POI physically present in that rate center. Mr. Goldstein will adduce the Guidelines, but I must point out that ILECs are not the "NXX cops." They lost number administration responsibility because they had the incentive and potential to, and did, use control over numbers to discriminate against competitors.

⁹ If the POI between CenturyTel and ASAP is or were to be located in San Marcos, I suspect CenturyTel would strongly object to rating calls to all of ASAP's NXXs (i.e., over lines associated with rate centers that are not local to San Marcos such as ASAP's Austin, Bastrop, Burnet, Georgetown, Jonell, Milaca, Smithville, Taylor, Ridge and Whatabird) as toll. But that would be the result of the deficit suggested by Ms. Smith at page 10 of her testimony and Mr. Robinson at page 16 of his testimony.

1 several of those end offices to be in different rate centers. It is not possible to have a single point
 2 of interconnect in a LATA and still have a POI in every local calling area in that LATA. Type
 3 2A by definition provides a single point of interconnect at the tandem for all end offices that
 4 subtend the tandem, even those that are in other local calling areas. Mr. Robinson explains this
 5 by saying Type 2A interconnection only gets a CMRS carrier "local" calling in the rate center
 6 that contains the tandem and ILEC end users in distant exchanges must pay toll to reach the
 7 CMRS carrier. He is wrong. CenturyTel itself has several agreements that expressly provide for
 8 disparate rating and routing points, as Mr. Goldstein's Rebuttal Testimony points out.

9 Finally, why is CenturyTel so concerned with what goes on after a call leaves its
 10 network? That does not affect its costs one iota. What it does seem to affect is CenturyTel's
 11 notion of entitlement. CenturyTel feels that it is entitled to recover above-cost access charges or
 12 long distance revenues unless a strict set of limited and rigid (indeed impossible) criteria are met.
 13 But few, if any, of these criteria are relevant to today's technology and the multiple platforms
 14 over which services are delivered. CenturyTel is an antiquated monopolist scrambling mightily
 15 to maintain monopoly rents from its users or its competitors. It is like a buggy whip vendor
 16 seeking protection from the automobile. I thought the '96 Act was supposed to end that.

17 Q: PLEASE DISCUSS THE ALTERNATIVES OFFERED BY CENTURYTEL?

18 A: Yes. CenturyTel says:

19 1. ASAP can allow CenturyTel to impose toll charges. This, of course, is no
 20 alternative at all. People are very reluctant to pay long distance charges to page someone or call
 21 an ISP on a routine basis. Paging customers expect and demand "local numbers" so that people
 22 who page them from within a community of interest not have to pay long distance. The same is
 23 true for ISP service. Toll charges essentially render our service non-competitive.

24 2. ASAP can "buy down" toll charges. This is expensive. CenturyTel wants to
 25 charge ASAP its switched access rate for each call. Switched access rates are significantly above
 26 cost and excessive and unreasonable. This whole case is about whether ASAP has to pay access
 27 for calls that are within the same extended local calling area. The FCC cases that discuss "buy-
 28 down" all address it in the context of a call that would otherwise be toll, i.e., between NXXs that
 29 are not "local" to each other, or when the ILEC must provide dedicated transport out of the local

1 calling area. But San Marcos is "local" to Kyle, Fortress and Lockhart, so CenturyTel cannot
 2 "otherwise" charge toll. Similarly, CenturyTel is not providing transport out of San Marcos.

3 I find it interesting that the Staff (page 12) expresses concern that ASAP may have a
 4 competitive advantage if it does not impose an RLCS surcharge on its users, but apparently has
 5 no problem with the extreme competitive disadvantage ASAP and its customers face when
 6 CenturyTel is not required to rate these as local calls.

7 3. ASAP can (a) get certificated as a CLEC and then (b) establish a meet-point with
 8 CenturyTel. This "option" is both illusory and meaningless. In the first place, no party has
 9 claimed that ASAP is required to be certificated in order to provide CMRS service to "people
 10 who carry a pager." CenturyTel has not said it will do a meet point if ASAP does not obtain a
 11 certificate for the calls to people "who carry a pager." What CenturyTel is saying, therefore, is
 12 that CMRS providers cannot participate in RLCS. This is just plain wrong. Second, with regard
 13 to traffic to ISPs—~~even if ASAP were to become certificated, CenturyTel apparently will still~~
 14 ~~claim it has no obligation to route "internet" traffic.¹⁰~~ The purported offer to do a meet-point is
 15 pure prevarication.

16 When CenturyTel routes a call from one of its subscribers to an ASAP NXX, the call
 17 goes to the current meet point between SWBT and CenturyTel.¹¹ SWBT takes the call from
 18 there and transits it to ASAP. CenturyTel has no involvement past its meet point with SWBT.
 19 The fact of the matter is that ASAP and CenturyTel already have a meet point (or at least a POI)
 20 of sorts: the current meet point between CenturyTel and SWBT.

21 This is significant. First, this means that CenturyTel is not required to deliver traffic
 22 outside of its local area and therefore does not bear any cost burden past that point.¹² This also
 23 means that CenturyTel is not transporting the call outside of its area, so the TCR and Mountain

¹⁰ See General Smith DIRECT Testimony, pp. 7-8. See also, CenturyTel Response to Notice for Arbitration by Level 3, PUC Docket 25673.

¹¹ According to Mr. Navarrotin, the meet point is within San Marcos, inside CenturyTel's exchange boundary.

¹² CenturyTel complains about "routing" outside of its local calling area, but very carefully has not asserted it has ~~incremental or additional~~ or any other cost burden outside of the local calling area. "Routing" is merely when the switch terminates tell the switch which trunk to put a call on. For CenturyTel this all occurs inside San Marcos. It is correct they are routing to a point outside San Marcos, but they do this for all calls to Lockhart, Kyle and Fortress, regardless of the identity of the terminating carrier.

1 cases Mr. Robinson cites do not apply. Second, using the current meet point with SWBT means
 2 that CenturyTel does not have to incur the significant expense of constructing new facilities to a
 3 brand new meet point with ASAP. CenturyTel saves money under the current arrangement since
 4 the incremental cost is much less than constructing new facilities. Third, if you apply the
 5 "default" rule suggested by Mr. Robinson and Ms. Smith, considering that the POI is in San
 6 Marcos, then ~~all~~ calls to ASAP's Austin LATA NXXs (and not just those for Lockhart, Fortress
 7 and Kyle) must be rated as local.

8 Q: DOES ASAP PROVIDE "VIRTUAL NXX SERVICE?"

9 A: No. It is true that the ISP customers' main business offices are not physically located in
 10 Kyle, Fortress or Lockhart. One is physically located in San Marcos. This ISP performs
 11 authentication, Domain Name Service, mail service and other functions in San Marcos. The
 12 traffic can fairly well be said to go back through San Marcos, where the calls from CenturyTel
 13 originated. Therefore, for calls that CenturyTel users make to this ISP customer, both the
 14 originating and terminating location are fairly arguably in San Marcos. I will further address the
 15 nature of the services ASAP provides to ISPs below.

16 The service we provide to the customers who carry a pager is absolutely ~~not~~ Virtual
 17 NXX. The FCC has said that "Virtual NXX codes are central office codes that correspond with a
 18 particular geographic area that are assigned to a customer located in a different geographic
 19 area."¹³ My customers who carry a pager are "located" in the same geographic area to which
 20 the number they receive corresponds. CMRS service is not subject to any of the criticisms
 21 typically made of Virtual NXX. CMRS carriers have facilities in the area (we have transmitters
 22 and connections to them); CMRS carriers have customers there; and, unlike in the Maine
 23 decision cited by Mr. Robinson, ASAP is authorized to provide service in Lockhart, Kyle and
 24 Fortress.

¹³ This definition comes from note 183 of the FCC's Unbundled Carrier Compensation Nprm, FCC 01-132.

SOPA Document 47-02-2503; PUC Document 2567; Rebuttal Testimony of Ted Geoghegan Page 11

Assuming this exercise is useful in any sense, it is important to understand that it is no easy task, especially in the wireless world. The industry has devised conventions and practices over the years to determine location. They sometimes use the customer's "premises" (or more precisely, the demarcation point between the carrier's network and a customer's inside wiring). They also use the "access line" that runs from the end office switch to the customer premises. Of course, the customer is not always at home; he or she could be next door and can still answer the phone if it is cordless. The customer may call forward to a cell phone and be anywhere, but the call to the customer is still rated as local to the calling party.¹⁸ Cellular providers can determine location sometimes because the cell site has two way communication with the user and a carrier can see what cell site is communicating with the phone; the carrier can now even locate the mobile user in the cell served area with reasonable certainty by triangulation. This is important for 9-1-1 and emergency response.

But paging units do not talk back to the transmitter. All my transmitters fire simultaneously with the same information. My mobile user could be anywhere. In the paging world the industry has always used the originating and terminating NXXs to determine rating. If the NXXs are "local" to each other, then no toll applies. The FCC has recognized this convention several times as I already indicated. The industry uses NXXs and their rate centers. CenturyTel has no other solution, except imposition of toll on everything.

ELCS expands a "local calling area" and so San Marcos NXXs are "local" to Lockhart, Ferdinand and Kyle NXXs. CenturyTel's retail tariff uses originating and terminating NXX to determine whether a call is "toll." It distinguishes between calls to access lines that are both in the "exchange" or "local service" area and access lines that are not in the same local service area. The access lines are identified by the number associated with them. The local service area for CenturyTel's users includes Kyle, Ferdinand and Lockhart.

With regard to the ISP, there a number of ways to "locate" the customer. It could be the ISP's premise or business office. It could be the place where the owner happens to be at any

¹⁸ The called party may pay long distance if the call forward is to a number that is not rated as local to his home, or if the called party is physically outside the MTA at the time the cell phone rings. The calling party, however, does not pay toll regardless of the physical location of the called party. This is because the industry rates the call based on the rate center associated with the calling and called NXX.

given point or where the checks are written to pay for service. It could be where the modems are that "answer" the call. It could be the place where the ISP performs authentication for log on, where the "IP" address for the user's computer is assigned for purposes of communicating over the Internet, or where the email servers are or where DNS administration occurs. It could be the demarcation point or the functional equivalent.¹⁹ Each of these locations as arbitrary as the others. CenturyTel has a lot of incentive to "locate" the ISP outside of its retail calling scope so it can argue that the calls are toll. We, of course, have the incentive to put the ISP where the call is local. With regard to San Marcos Internet there is a fairly compelling argument that the call goes back to San Marcos before it routes to the Internet. I'll reiterate, however, that ASAP really thinks the entire exercise is irrelevant and a waste of time and CenturyTel cannot have it both ways. The ISP's location cannot be both irrelevant for purposes of "jurisdiction" and determinative for purposes of rating.²⁰ We believe that the "find the ISP" host serves no useful purpose. There are really good reasons for them to meet with us in Austin and still provide local calling availability in the smaller towns in the Austin LATA. Mr. Goldstein addresses those reasons in his Rebuttal Testimony.

Q: IS ASAP ACTING AS A COMMON CARRIER WHEN IT PROVIDES THESE SERVICES TO ISPs?

A: ASAP initially took the position that it was not acting in a common carrier role. We have since that time reviewed what we believe to be the applicable authority and have concluded that it is common carrier, and always was regardless of whether we "held out" as a common carrier. There appear to be two basic reasons, but I do not profess to fully understand them. First, I

¹⁹ Mr. Robinson expressed a preference for using the demarcation point or its equivalent in his deposition.

²⁰ ASAP is not being inconsistent by claiming the services it provides to ISPs is interstate but the calls to ISPs are local. Our position has nothing to do with the ISP's location. End users pay a mandatory monthly fee to ILRCs for access to the interstate network. There are several examples where an end user can call an Interstate carrier but the call is rated as local. Two examples are switched access Future Group A and switched access Future Group B (One side). Under the federal rules, ISPs obtaining service from ILRCs can choose between buying their Interstate information access service out of the ILRC's local tariff or out of the ILRC's Interstate switched access tariff. In both cases, the call from the ILRC's end user is rated as local. The FCC did this because it recognized that end users will not pay per minute long distance charges in such an ISP. Indeed, ILRCs in Texas has been pushed because it allows rural users to reach ISPs in larger communities without paying toll. ILRCs makes affordable Interstate access more available. See, e.g., <http://www.fcc.gov/edocket/020100002/020100002.pdf>.

1 understand that telecommunications service is by definition common carrier. What we provide
 2 to ISPs is interstate information access, a telecommunications service. Therefore, it is common
 3 carrier activity. Second, in similar fashion, if a service is CMRS – either incidental or part of the
 4 primary service that uses the licensed spectrum – it is common carrier as a matter of statute.
 5 Incidental services are CMRS under FCC rules, and therefore the services we provide to ISPs is
 6 common carrier. This appears to be a purely legal question.

7 Q: ARE THERE SOME SERVICES YOU PROVIDE WHICH ARE NOT COMMON
 8 CARRIER?

9 A: I'm going to leave the answer to the lawyers, but ASAP does provide what I understand
 10 to be "information service" to both its customers who carry a pager and to ISPs. The FCC has
 11 generally indicated that information service provision is not common carrier activity; it has not,
 12 to my knowledge, ever specifically ruled on whether information services provided by CMRS
 13 carriers is common carrier activity under § 332(c)(1) of the Act. I do know the FCC has strongly
 14 encouraged CMRS carriers to provide information service, and has repeatedly emphasized their
 15 attempts to do so.

16 Q: WHAT INFORMATION SERVICES DO YOU PROVIDE TO CUSTOMERS THAT
 17 CARRY A PAGER?

18 A: When a person who calls one of our NXXs assigned to a "customer who carries a pager"
 19 that person has the choice of either causing the calling party number to be transmitted to the
 20 paging customer or to leave a recorded voice message. If the latter, the paging customer receives
 21 a page that tells the paging customer a message is waiting. The paging customer then calls his or
 22 her own number and is able to retrieve the message.²¹ I understand that voice messaging has
 23 been deemed to be an information service.

24 We also provide text messaging. Someone can send an email over the Internet to our
 25 customers who carry a pager, and the text message is forwarded to the pager. ASAP is connected
 26 to the Internet and emails come in to our server. We change the content (some of the header

²¹ When the paging customer calls in and retrieves the message, there is no use of the spectrum. Mr. Robinson is therefore wrong when he says interconnection is not available to CMRS carriers when the spectrum is not used with every call.

1 information is deleted) and the message is then stored and forwarded to the customer's pager.
 2 This is therefore an information service, at least in part. I do not know whether this is common
 3 carrier.

4 I have to note that there is a growing interrelationship between the Internet and paging
 5 service. CenturyTel makes like the two have no connection other than ASAP's use of
 6 interconnection trunks and a switch to direct calls to customers who carry a pager or to ISPs.
 7 ASAP, however, uses the Internet as a significant part of its CMRS network; you cannot separate
 8 the two. This is why we believe that providing connections to ISPs is incidental. The Internet
 9 and paging service are intertwined and the joining will continue. They are related and
 10 complementary and at some point may wholly join.

11 Q: CAN ASAP USE THE INTERCONNECTION TRUNKS IT HAS OBTAINED AS A
 12 RESULT OF ITS CMRS AUTHORITY TO ALSO PROVIDE INFORMATION SERVICE?

13 A: I believe so. FCC rule 51.100 says:

14 (a) Each telecommunications carrier has the duty:
 15 (1) To interconnect directly or indirectly with the facilities and equipment of
 16 other telecommunications carriers; and
 17 (2) To not install network features, functions, or capabilities that do not comply
 18 with the guidelines and standards as provided in the Commission's rules or section
 19 255 or 256 of the Act.

20 (b) A telecommunication carrier that has interconnected or gained access under
 21 sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information
 22 services through the same arrangement, so long as it is offering
 23 telecommunications services through the same arrangement as well.

24 This rule requires an ILEC to directly or indirectly interconnect²² and the requesting
 25 carrier can use the interconnection to offer information service if it also provides
 26 telecommunications service. ASAP clearly offers telecommunications service to both its
 27 customers "that carry a pager" and to its ISP customers. ASAP can therefore also use those
 28 trunks to provide information service.

²² CenturyTel and ASAP are indirectly interconnected via SWBT.

1 Q: CAN ASAP USE THE INTERCONNECTION TRUNKS IT OBTAINED AS PART OF
 2 ITS CMRS AUTHORITY TO ALSO PROVIDE CONNECTIONS TO ISPs?

3 A: Yes. First, ASAP contends that the service is CMRS because it is incidental. However,
 4 even if that is not correct, ASAP is not aware of any regulatory rule or principle holding it cannot
 5 use the same trunks for both. Both are telecommunications service and ASAP is entitled to
 6 CMRS interconnection under §§ 201 251, 332 and Parts 20 and 51 of the FCC's rules. Those
 7 rules do not prohibit a CMRS carrier from providing "non CMRS" services using those trunks.
 8 Requiring segregated trunks or an entirely different interconnection would be wasteful and
 9 duplicative for all concerned. The only rules that distinguish between "voice" and "Internet" are
 10 for compensation purposes, not physical interconnection purposes. Depending on CenturyTel's
 11 election, under the FCC rules while ASAP is entitled to compensation for the "voice" traffic, it
 12 may not be entitled to compensation for calls to ISPs. ASAP, however, has chosen to not seek
 13 reciprocal compensation from the ILECs for calls to customers who carry a pager or the ISPs.
 14 There is therefore no difference. Any attempt by CenturyTel to force different arrangements
 15 would be only to make it difficult and expensive for ASAP to compete with CenturyTel.

16 Q: DID ASAP UNDERSTAND IN SEPTEMBER AND OCTOBER OF 2001 THAT
 17 CENTURYTEL WAS OPENING ASAP's KYLE, FENTRESS AND LOCKHART NXXs ON
 18 ONLY A "30 DAY" TEMPORARY BASIS PENDING NEGOTIATION AND EXECUTION
 19 OF A WRITTEN AGREEMENT?

20 A: Absolutely not. I was very surprised to read that claim in Mr. Navarrete's direct
 21 testimony. The only discussion of "30 days" related to when CenturyTel would open the codes.
 22 Mr. Barker indicated to me by email on October 8, 2001 that the codes would be opened in 30
 23 days. CenturyTel did offer by separate letter a temporary arrangement on October 8, but it
 24 required a written interim agreement to which ASAP did not agree. It also would have lasted up
 25 to 135 days, not 30 days. I responded by email on October 10 and expressed disappointment that
 26 after considerable delay there would be an additional 30 day delay. CenturyTel actually opened
 27 the codes in its switch within a few days after my October 10 email. If Mr. Barker meant to
 28 authorize opening these codes for only a 30 day period, that was not my understanding, it was
 29 never communicated to me and ASAP did not agree to a time limitation.

1 Q: DID YOU KNOW THAT CENTURYTEL WAS GOING TO UNILATERALLY
 2 RETRANSLATE ITS END OFFICE SO THAT CALLS TO ASAP's KYLE, FENTRESS AND
 3 LOCKHART NXXs WOULD NO LONGER BE DIALABLE ON A 7-DIGIT "LOCAL"
 4 BASIS ON APRIL 2, 2002?

5 A: No. Not at all. Absolutely not. To the contrary, I believed that the parties were going to
 6 discuss a traffic exchange agreement. In fact, on April 3 (the day after CenturyTel began
 7 imposing toll) Gary Barker wrote me that retranslations to require 1+ dialing and impose toll
 8 would not occur until May 6. CenturyTel acted unilaterally and jumped the gun and is now
 9 engaging in revisionist history.

10 Let me go through the time line.

11 * May, 2001. ASAP requested that CenturyTel open the codes to allow local calling to its
 12 Lockhart, Kyle and Fentress NXXs. This was an oral request to CenturyTel's switch engineer in
 13 San Marcos.

14 * September, 2001. ASAP ultimately reaches Mr. Barker at CenturyTel. Mr. Barker states a
 15 written agreement is a required prerequisite to them opening the code.

16 * September 27, 2001. ASAP sent a FAX to Mr. Barker indicating that no agreement was
 17 required before CenturyTel had to honor extended calling between San Marcos and Lockhart,
 18 Kyle and Fentress.

19 * October 2, 2001. CenturyTel responded by reiterating that an agreement on compensation was
 20 required.

21 * October 3-4. ASAP and CenturyTel exchange information about the NXXs in issue.

22 * October 10, 2001. CenturyTel indicated it was opening the codes in 30 days. CenturyTel
 23 also sends separate letter offering a temporary arrangement pending a final arrangement to be
 24 negotiated within 135 days. There is no indication the code opening was limited to 30 days.

25 * October 10, 2001. ASAP responded to the October 2 and 10 communications by email and
 26 letter. ASAP objected to an additional 30 day delay in opening the codes. ASAP did not agree to
 27 the temporary arrangement, and indicated no agreement was necessary.

28 * October 11, 2001. Mr. Barker sends email indicating the codes have been opened for 7-digit
 29 local dialing.

1 * November 2, 2001. ASAP queries on status and Mr. Barker indicates that "the process is
2 done." ASAP considers the matter resolved.
3 * March 1, 2002. CenturyTel sends letter indicating the traffic is processing over toll trunks, not
4 ELCS trunks and asserting that CenturyTel can impose toll on its users when they call ASAP's
5 Lockhart NXX. CenturyTel says ASAP must enter a reverse billing arrangement with
6 CenturyTel by March 31, 2002 or CenturyTel will begin to assess toll some time thereafter.
7 * March 4, 2002. ASAP responds to March 1 letter and reiterates that no agreement is
8 necessary, but indicates a willingness to discuss an agreement. ASAP provides notice it will not
9 give up its rights to indirect interconnection. ASAP indicates it is not interested in reciprocal
10 compensation at this time, even though it is entitled to such compensation.
11 * March 8, 2002. CenturyTel sends a reply to March 4 ASAP letter but this reply has little
12 substance. This letter does not threaten to impose toll on any particular data. ASAP concludes
13 that CenturyTel understood ASAP's indication of a willingness to have a traffic exchange
14 agreement.
15 * April 3, 2002. CenturyTel sends another letter stating a reverse billing arrangement is required
16 to avoid tolling calls between San Marcos and Lockhart. The letter states that "(I)f the parties
17 cannot execute a reverse billing arrangement by May 6, 2002, CenturyTel will be forced to begin
18 assessing toll to the affected end users." Of course, by this time someone in San Marcos has
19 already performed the translations to assess toll, without any previously given final notice or
20 deadline to ASAP.

21 Q: WERE YOU SURPRISED WHEN CENTURYTEL PERFORMED THESE
22 TRANSLATIONS EFFECTIVE APRIL 1, 2002?

23 A: Surprised is a mild term. I learned from my local reseller and from San Marcos Internet.
24 We soon thereafter filed this case. I certainly would have filed a complaint before April 1 had I
25 known CenturyTel was going to do what it did on April 2 rather than discuss compensation
26 under the guiding regulatory principles. CenturyTel simply will not recognize those principles or
27 negotiate around them, however. Its position from the beginning was that ASAP had to enter a
28 reverse billing arrangement and pay access for these local calls. To CenturyTel, "negotiate"
29 means "sign here."

1 Q: ARE YOU INTERCONNECTED WITH SWBT UNDER ITS CELLULAR TARIFF?

2 A: No. We are interconnected with SWBT under the federal Act. We do obtain reverse
3 billing from SWBT for the 512-222 NXX and that service is offered under the tariff. The
4 purpose of that is to be able to collect calls in areas where we do not have an NXX. Where there
5 is a local NXX, we are trying to move away from giving a 512-222 number to our customers.
6 CenturyTel's action has frustrated that effort. I have to note again that SWBT ~~does not assess~~
7 toll or impose reverse billing when the originating and terminating NXXs are associated in the
8 same rate center as the 512-222 NXX. The 512-222 NXX is associated with Austin rate center.
9 We do not pay reverse billing for calls originating in Austin that go to the 512-222 NXX.
10 CenturyTel, however, insists on charging reverse billing for all calls to any "reverse billing"
11 NXX regardless of the rate center.

12 Q: DO YOU ASSESS AN ELCS FEE OR SURCHARGE ON YOUR CUSTOMER THAT
13 USE KYLE, PENTRESS OR LOCKHART NUMBERS?

14 A: No, but if the Commission wants me to raise prices by \$.30 cents like CenturyTel then I
15 might consider that to address Mr. Kalasaw's concern. But considering the price CenturyTel
16 charges to ISPs for a PRI trunk is over four times what we charge, and about twice what SWBT
17 charges, this \$.30 will not make any difference. The presence or lack of this charge has
18 absolutely no impact on our competitive position, or that of the ISPs we serve.

19 Staff witness Kalasaw appears to be concerned with whether an "Austin" ISP will have a
20 competitive advantage over a "Lockhart" ISP. Mr. Goldstein explains why ISPs have to
21 consolidate their activities in larger towns in order to efficiently serve rural areas. Staff seems to
22 believe that it is better to require ISPs to have analog modems in each local area rather than
23 consolidated digital equipment that allows them to provide cost effective and higher quality
24 service to a large body of customers - both urban and rural. As Mr. Goldstein points out, this
25 line of thinking is what has caused the digital divide. Any state that requires an ISP to adopt this
26 network arrangement is only doing to protect the ILEC. I cannot understand how someone
27 interested in making affordable and modern internet access available to rural areas would force
28 ISPs to locate slow-speed and antiquated analog modems within each local calling area.

1 ASAP does not have an ELCS "revenue requirement." We do not provide intraLATA
2 toll, and there are therefore no intraLATA toll charges we forego. Because of the way our
3 network operates, our costs are essentially the same regardless of the number we assign. We
4 have no "ELCS costs" or "foregone toll." And, more important, CenturyTel is indifferent to
5 whether we provide the Lockhart service or SWBT does. CenturyTel has the same cost and lost
6 revenue whether it hands a call to SWBT for termination to a SWBT caller or hands a call to
7 SWBT for transit to ASAP.

8 Q: ARE YOU AMENABLE TO ENTERING AN ELCS ARRANGEMENT WITH
9 CENTURYTEL?

10 A: I don't have to do that and I shouldn't not have to do that. This ELCS arrangement on
11 same terms²¹ argument is simply an excuse by CenturyTel. First, CenturyTel has no "ELCS
12 arrangement" with either SWBT or Verizon. There is no document. For the Lockart ELCS there
13 is a meet-point with SWBT within CenturyTel's boundary. It is the same meet point as is used
14 for "bill trucks." The traffic flows in the same fiber group. CenturyTel is cost-indifferent to
15 whether it hands calls to SWBT for delivery in Lockhart or for transit to ASAP. I believe
16 CenturyTel would strongly object to building new fiber from its wire center to the current meet
17 point just to meet-point with ASAP. CenturyTel has already made it clear it does not feel
18 obligated to do a meet point with CMRS carriers for ELCS traffic.

19 In my view it is bizarre to suggest that the parties should do a fiber meet for less than a
20 DS3's worth of traffic when there is clearly sufficient capacity on the existing SWBT-
21 CenturyTel meet-point. This whole argument is a sham and is designed to delay and deter.

22 Q: HAS CENTURYTEL IMPOSED TOLL ON ITS END USERS WHO CALLED ISP'S
23 SERVED BY ALTERNATIVE CARRIERS USING EXTENDED AREA CALLING
24 NUMBERS IN OTHER STATES?

25 A: --Yes. It did so in 1999 in Michigan. The Michigan Commission rejected several of the
26 user access offerings by CenturyTel in this case and found CenturyTel \$4,450 per day for violating
27 inter-carrier billing against the end-user involved and the alternative carrier. A copy of
28 this decision is attached to this testimony as Exhibit Relat. Exhibit 1-1.

1 Q: YOU SAY THE MICHIGAN COMMISSION FINED CENTURYTEL FOR
2 SOLICITING FRANCHISES. WHAT DOES CENTURYTEL SAY?
3 A: Excepts of CenturyTel's Texas tariff are attached to this testimony as Exhibit Relat.
4 Exhibit 2. That tariff does not distinguish between providers when it comes to ELCS, the tariff
5 speaks to "exchanges." CenturyTel's tariff does not distinguish between LBC numbers or
6 alternative provider numbers, including the definition of "exchange." I do not think that
7 CenturyTel's tariff can reasonably be read to allow it to discriminate between non-LBC carriers
8 for ELCS purposes, nor does it allow CenturyTel to impose toll charges on its customers when
9 they dial a number associated with an ELCS area just because the terminating carrier is not an
10 LBC. I believe CenturyTel violated its tariff by requiring 1+ dialing and imposing toll between
11 April 2 and April 19. I also believe that CenturyTel engaged in unconsensual discrimination
12 against ASAP (and CenturyTel's own users), and further that it did so for anticompetitive
13 reasons.

14 My Direct Testimony included a bill from CenturyTel charging toll to one of its users
15 after April 19 for calls that went to ASAP's Lockhart NXX. I note that CenturyTel's bill
16 represents that the call went to "Lockhart." Despite all of its disclaimers and protestations and
17 attempts to cloud this issue, CenturyTel told one of its users that the user had to pay toll to call
18 "Lockhart." This is a tariff violation, just like the Michigan Commission found.

19 Q: ARE THERE ANY OTHER DECISIONS OR PENDING CASES YOU BELIEVE
20 PROVIDED GUIDANCE?

21 A: As I said in my Direct, I am not fluent in regulatory speak and try to avoid this stuff. But
22 several cases deserve mention. First, the Texas Commission rejected many of CenturyTel's
23 arguments in Docket 24015, the so-called "TX Doctor" which concerned CJBCs and ILBCs.
24 The PUC found that FX-Hlo services was not illegal, that access charges did not apply and the
25 inter-carrier compensation was bill and keep. The Illinois Commission ruled the same way in a
26 similar case this summer.²² This is essentially the result advocated by ASAP although there are

²¹ See "History of the Michigan Bell Telephone Co. - Relat. Exhibit 1-1." See also "Michigan Bell Telephone Co. v. State Board of Public Utilities, No. 2000-07-25673, Appeal from the Michigan Bell Telephone Co., Inc., et al., Defendants, vs. Michigan Bell Telephone Co., Inc., et al., Plaintiffs," dated April 24, 2002, 2002 MI 7003263.

²² See "History of the Illinois Bell Telephone Co. - Relat. Exhibit 1-2." See also "Illinois Bell Telephone Co., Inc., et al., Defendants, vs. Illinois Bell Telephone Co., Inc., et al., Plaintiffs," dated April 24, 2002, 2002 IL 7003264.

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S04H-Dialect 473-02-2503; PUC-Dialect 2503; Bilingual Inventory of East German

ANSWER The answer is 1000. The first two digits of the product are 10.

REBUTTAL TESTIMONY OF TED GALTJIN

EXCERPT

- 1 **Galtjintel**, however, still seems to think that it is the gatekeeper for all communications
2 from San Mateo, and no one should have the right of opportunity to call a customer of a non-
3 ILLBC unless **Galtjintel** receives a bill or access charges.
4 The single question that must be made is whether customers of an ILLBC can be required
5 to dial 1+ and pay toll when they call a customer of an alternative provider. **Galtjintel** has
6 shown a lot of smoke and it has engaged in a lot of generalization. I hope and pray that the
7 Commission will see through all of this and do what is right. If it does not, then there will be no
8 competition in smaller towns, and competitive and affordable access to the Internet will be
9 hindered to little towns. Localism, Kyle and Peabody will be able to connect only through the
10 ILLBC's captive ISP. This will not be a good result.
11 When I was young, my family could have my color phone we wanted - so long as it was
12 black and noisy. If there was phone service at all. Society today requires much more
13 connectivity, a whole new, however, is a place that the Commission takes us back to those same
14 days when the telephone company could decide it and when said how a customer connected to
15 the world. Back to mistake. Currently it is essentially saying that the FCC's decisions on
16 who does telecommunications are wrong. They are saying that telephone companies are more important than do
17 standard competition. They are saying that telephone companies are more important than do
18 consumers they serve.
19 I feel that today, and I hope the Commission does too.
20 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?
21 A. Subject to my supplemental, yes. Thank you.

1 of 1 DOCUMENT

In the matter of the complaint of GLENDA BIERNAN against
CENTURYTEL OF MICHIGAN, INC., d/b/a CENTURYTEL

Case No. U-11621

MICHIGAN PUBLIC SERVICE COMMISSION

1999 Mich. ASC LEXIS 118

April 12, 1999

[+1] PRESENT: Hon. John G. Strand, Chairman; Hon. David A. Svanda,
Commissioner

OPINION: At the April 12, 1999 meeting of the Michigan Public Service Commission
in Lansing, Michigan.

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On October 16, 1998, Glenda Bierman filed a complaint against CenturyTel of Michigan, Inc., (CenturyTel) alleging that, in violation of its tariff, the company had billed her more than \$ 2,500 in toll charges for local calls placed from her home in CenturyTel's Newport Exchange to the Monroe Exchange. The complaint also alleged that, in violation of the Michigan Telecommunications Act (MTA), MCL 488.2101 et seq.; MSA 22.1469(1)(a) et seq., CenturyTel had discriminated by treating other calls to the Monroe Exchange as local.

On November 5, 1998, a prehearing conference was held before Administrative Law Judge Daniel H. Richardson, Jr. (ALJ). At a prehearing conference on November 24, 1998, the ALJ granted the petition for leave to intervene filed by MHS Communications L.L.C., d/b/a Phone Michigan, (Phone Michigan). The Commission Staff (Staff) also participated in the case.

Evidentiary hearings were held on January 19 and 20, 1999. The record consists of four [P2] volumes of transcripts totaling 368 pages and 15 exhibits. The complainant, CenturyTel, the Staff, and Phone Michigan filed briefs and reply briefs.

On March 12, 1999, the ALJ issued a Proposal for Decision (PFD). On March 19, 1999, CenturyTel, the Staff, and Phone Michigan filed exceptions. By March 26, 1999, the complainant, CenturyTel, the Staff, and Phone Michigan filed replies to exceptions.

II.

DISCUSSION

Local Calls

Ms. Bierman resides in Newport, Michigan, where CenturyTel provides basic local exchange service. She purchased Internet service from MSHN, an Internet service provider (ISP), in July 1998. From July 27 to August 21, 1998, Ms. Bierman accessed MSHN at the number (734) 349-8100, which is assigned to Phone

Michigan in the Monroe Exchange. Ms. Bierman's phone bill dated August 16, 1998 showed 11,123 minutes of toll calls, most to MSHN, at a cost of \$ 2,038.14. Exhibit S-2. Ms. Bierman's phone bill dated September 16, 1998 showed another 3,010 minutes of toll calls, most to the same number, at a cost of \$ 541.80. Exhibit S-2. Ms. Bierman testified that she has made numerous calls from Newport to Monroe and, except for the calls to MSHN, has never been [*3] assessed toll charges. She also testified that when she signed up with MSHN, she was advised that the calls would be local. After receiving the bills with toll charges, Ms. Bierman returned to her former ISP.

Ms. Bierman argues that CenturyTel violated its tariff, which shows the local calling area for the Newport Exchange as including Monroe. Exhibit S-1. She also argues that the average customer looking at the information in the telephone directory would conclude that service between Newport and Monroe is local, particularly because most customers are not sufficiently informed to know the meaning of the NXX 11 listings in the directory. Exhibit E-9. Ms. Bierman asserts that it is a violation of Section 502 of the MTA for CenturyTel to fail to inform its customers of the toll charges and to mislead customers into believing that all calls to the Monroe Exchange will be treated as local. Ms. Bierman also argues that it is a violation of Section 305 of the MTA for CenturyTel to discriminate by treating calls to Ameritech Michigan's customers in Monroe as local.

- - - - - Footnotes - - - - -
[+1] NXX refers to the first three digits of the telephone number.

- - - - - End Footnotes - - - - -
[+4]

The Staff argues that the MTA, prior Commission orders, and CenturyTel's tariff do not permit the exclusion of any customer from the designated local calling area and that CenturyTel's tariff provides that the local calling area for the Newport Exchange includes both the Newport and Monroe exchanges. Exhibit S-1. The Staff says that CenturyTel's exclusion of Phone Michigan's NXX from the list of local NXXs in the telephone directory does not mean that toll rates should apply. The Staff also denies that the 11 digit dialing arrangement imposed by CenturyTel for calls to Phone Michigan's NXX means that toll rates should apply. The Staff argues that the 11 digit dialing requirement is an inferior interconnection prohibited by Section 305 of the MTA and Section 251(b)(3) of the federal Telecommunications Act of 1996, 47 USC 251(b)(3).

The Staff denies that the termination of the calls to MSHN, a customer whose equipment is collocated at Phone Michigan's switch in Flint, means the calls must be treated as toll. The Staff argues that the calls should be rated based on termination in the Monroe NXX for several reasons. First, calls are traditionally rated on the basis of the NXX. Second, [*5] treating all calls to a particular NXX as toll is an overly broad solution to the claimed problem that some of the calls to that NXX are routed to a customer located elsewhere. Third, some calls to Ameritech Michigan's customers with Monroe NXXs are routed beyond Monroe but CenturyTel rates those calls as local.

Finally, the Staff argues that the status of interconnection arrangements between CenturyTel and Phone Michigan is irrelevant to whether CenturyTel must rate the calls as local. The Staff argues that the routing and rating of a call are separate matters. The Staff argues that although the Commission has reviewed and approved the terms and conditions under which local or toll rates apply, it

has seldom if ever specified the routing of a call. The Staff also argues that interconnection may be provided by tariff or agreement and that, when an agreement is used, the Commission has not required any particular agreement. The Staff asserts that CenturyTel and Ameritech Michigan are providing EAS pursuant to tariff and that the existing tariffs, which are available to any provider, are adequate to permit Phone Michigan to complete EAS calls from Newport to Monroe.

Phone Michigan argues [+] that CenturyTel's tariff does not specify that the EAS offered between Newport and Monroe applies only to calls to Ameritech Michigan's customers. Phone Michigan argues that there is no reference in the tariff to the 1962 or 1985 EAS agreements between CenturyTel and Ameritech Michigan and, in any event, those agreements have been terminated and do not require CenturyTel to rate the calls to Phone Michigan's NXX as toll. It also argues that CenturyTel's actions are anticompetitive and discriminatory because Ameritech Michigan receives preferential treatment in the rating of calls to its customers.

CenturyTel argues that calls to NXX terminate in Flint and are not local as defined by Section 102(c) of the RFA or its tariff and that its tariff must be interpreted on the basis of the Commission's 1962 order in Case No. U-846, which found a community of interest between the adjacent exchanges of Newport and Monroe, not Newport and Flint. It also argues that Phone Michigan lacks authority to provide basic local exchange service in the Monroe Exchange because it has not filed the required maps and tariffs defining the geographic area served. As a result, CenturyTel argues that Phone Michigan's [+] Monroe Exchange is not legitimate and cannot be treated as part of the local calling area for Newport. It further asserts that toll rates must apply until Phone Michigan has an EAS agreement with it. On the other hand, CenturyTel expresses sympathy for Ms. Hierman's situation and is willing to reduce the toll charges to \$.36 .00, the cost for two months of service under the Adjacent Exchange Toll Calling Plan (AETCP).

The ALJ found that CenturyTel's tariff failed to inform customers that calls from the Newport Exchange to the Monroe Exchange would be rated as toll calls when Phone Michigan serves the party being called. Further, the ALJ found that there was no notice in the tariff that toll charges would apply unless the provider serving the called party had an interconnection arrangement. Rather, he noted that the tariff shows Monroe as within the local calling area for Newport. In addition, he noted the RFA defines the local calling area as "a geographic area encompassing 1 or more local communities as described in maps, tariffs, or rate schedules filed with and approved by the commission." NCL 104.2102(c); RFA 22.1469(102)(c).

The ALJ rejected the argument that the calls were not [+] local because they were routed to Flint. He agreed with the Staff's assessment that the routing of a call is separate from the rating of a call. He also noted that the disputed phone bills show Monroe as the city called. He concluded that the calls originated in Newport and terminated in Monroe, just as calls to Ameritech Michigan's customers that are similarly routed outside of the Monroe Exchange are considered local. In that context, he acknowledged that Ameritech Michigan pays Feature Group A charges to CenturyTel for those calls but, again, noted that the tariff does not disclose that arrangement.

Finally, the ALJ rejected the argument that information in the telephone directory determines whether a call is local. First, he noted that the listing of local calling areas in a telephone directory is not required by the statute. Rather, the NXX required maps, tariffs, and rate schedules to be filed with and

approved by the Commission. Second, he noted that the telephone directory, unlike a tariff, cannot be kept current to include new NXXs and NXXs for which the rating may change. The ALJ concluded that the tariff rather than the directory governed and the calls must be billed as [+] local.

CenturyTel excepts to the ALJ's conclusion.

The Commission concludes that the complaint must be resolved by reference to the tariff under which CenturyTel provides basic local exchange service to its customers. That tariff defines the local calling area for the Newport Exchange as including the Monroe Exchange. CenturyTel argues, notwithstanding the language of the tariff and a long tradition of local calling to the Monroe Exchange, that calls to only certain customers of certain providers with certain NXXs are local calls and that the customer must determine for herself, at the risk of receiving an unexpected bill for thousands of dollars, whether a particular call will be treated as local or toll. The plain language of the tariff does not support CenturyTel's position. Nevertheless, CenturyTel offers several reasons that its tariff should not be implemented as written.

CenturyTel argues that the Commission's order in Case No. U-846 authorized CenturyTel's predecessor to offer EAS to the Monroe Exchange only in conjunction with Ameritech Michigan and only pursuant to the EAS agreement that was before the Commission. CenturyTel misunderstands the order. The Commission did not [+] conclude that the "community of interest" between Newport and Monroe, which justified the offering of EAS, depended to any extent on the identity of the providers of basic local exchange service in either exchange, a fact that CenturyTel implicitly acknowledges by its exercise of the authority granted to a predecessor company to offer EAS in the Newport Exchange. Furthermore, the Commission did not approve any particular manner of providing that service. Although the parties had placed an agreement before the Commission, the order did not require that EAS be provided only under that agreement, another fact that CenturyTel implicitly acknowledges by having entered into a new agreement with Ameritech Michigan in 1985 and continuing to offer EAS after Ameritech Michigan terminated that agreement. The tariff properly reflects the Commission's decision that CenturyTel is to offer EAS to its customers regardless of the identity of the provider serving the customers in the Monroe Exchange.

CenturyTel argues that its telephone directory specifies the NXXs to which EAS is offered and the list does not include the NXX for Phone Michigan. Information provided in a telephone directory cannot [+] prevail over the language of the tariff, at least when it is detrimental to customers. Furthermore, the argument proposes an entirely unworkable system. CenturyTel is willing to provide EAS for calls to Ameritech Michigan's customers (or at least most of them), but if Ameritech Michigan were to obtain a new NXX in the Monroe Exchange, this argument presumably means that CenturyTel would not permit EAS for calls to customers with the new NXX until CenturyTel published a new directory. Likewise, the argument means that CenturyTel would not permit EAS for calls to customers of a new provider until it published a new directory. The argument is even more untenable in light of CenturyTel's position that EAS is not available for calls to all customers with an NXX assigned to the Monroe Exchange, but only for calls that terminate in the exchange. As its argument means that it would have to determine on a number-by-number basis which of the telephone numbers in the Monroe Exchange would be treated as local, its directory (and directory assistance) would have to be kept current with that information, customers would have to periodically consult that list or risk paying toll charges, and CenturyTel [+] would be able to change the status of

a number only as often as it published a new directory. The proposal is entirely unworkable as well as inconsistent with the tariff.

-Footnotes-

n2 Centurytel views it as improper for an EAS call from Newport to Monroe to be forwarded outside the Monroe Exchange. 4 Tr. 362.

-End Footnotes-

Centurytel argues that calls to NXXX required the dialing of 11 digits, which informed the customer that the calls would be treated as toll calls. Again, the argument is inconsistent with the tariff and is unworkable. With the proliferation of NXXs, area code splits, and new providers, dialing arrangements do not determine whether a call is local or toll. Further, the argument is unpersuasive because Centurytel determined for its own reasons that customers would be required to dial 11 digits for calls to the NXX assigned to Phone Michigan. There is no technical reason for that dialing arrangement. 4 Tr. 349.

Centurytel argues that NXXX does not have a physical presence within the Monroe Exchange because the calls are terminated [⁺¹²] to equipment in Flint. Again, the tariff does not specify that an EAS call must terminate within the exchange, and the argument ignores the fact that routing and rating need not be the same. In fact, the bills sent to Ms. Bierman show the calls as made to Monroe, not Flint, despite the routing and termination of the calls. In any event, the rating for the calls was determined not by the routing but by Centurytel. 4 Tr. 337. Furthermore, the argument is a red herring because Centurytel would rate calls to Phone Michigan's customers as toll even if the customers had a presence within the Monroe Exchange. 4 Tr. 313-314. Its position is that until it has an acceptable interconnection agreement with Phone Michigan, it will not rate the calls as local regardless of where the customers are located. n3

-Footnotes-

n1 It is likely that Centurytel is discriminating against Phone Michigan. Although the record is not conclusive, it is doubtful that Centurytel has tried to determine on a line-by-line basis where calls to Ameritech Michigan's customers terminate or to rate calls on the basis of the presence (or lack thereof) of Ameritech Michigan's customers. 4 Tr. 303-308.

-End Footnotes-

[+14]

Centurytel argues that Phone Michigan does not have an interconnection agreement with it. Again, the tariff does not state that requirement, and Centurytel and Ameritech Michigan do not have an interconnection agreement that governs EAS. Their 1982 agreement was replaced by a 1985 agreement, and Ameritech Michigan gave notice, as it had the right to do, that it was terminating that agreement. Further, if there were an agreement in place today, Ameritech Michigan would be required to file it for Commission approval. It has not done so. While it may be true that the same facilities are in use as in 1982, that does not mean the agreement is still in effect. In any event, Centurytel concedes that the important matter of interconnection rates is governed by tariff, not by the terminated interconnection agreements. 4 Tr. 317-318.

In short, none of these arguments can overcome the effect of the plain language of the tariff that governs Centurytel's relationship to its customers. Consequently, the disputed calls were local calls and must be billed as such. There is no basis for Centurytel's suggestion that it be permitted to bill the complainant for two months of ASTCP service, which is not [⁺¹⁵] available for calls from the Newport Exchange to the Monroe Exchange. Exhibit 8-7. The Commission therefore orders Centurytel to rebill Ms. Bierman on the basis that the calls were local and to provide 90 days for her to pay any amount still due after the recalculation of her bill.

Interconnection

It is apparent that the root cause of the filing of this complaint is a dispute between Centurytel and Phone Michigan. Centurytel argues that Phone Michigan does not have the interconnection agreement needed to permit Centurytel's customers to complete EAS calls from the Newport Exchange to Phone Michigan's Monroe Exchange and is not currently authorized to provide service in the Monroe Exchange. It is not apparent why Centurytel let that disagreement become a reason to bill one of its own customers in violation of its tariff.

The ALJ concluded that Section 303 of the RFA requires an interconnection agreement between Centurytel and Phone Michigan. The ALJ did not agree with the Staff's position that interconnection may also be accomplished by tariff. The ALJ acknowledged that Ameritech Michigan had provided notice that it was canceling its EAS agreement with Centurytel (although Centurytel [⁺¹⁶] disputed the effectiveness of that notice) and might no longer have an agreement with Centurytel. He nevertheless concluded that Phone Michigan needed an interconnection agreement because he found a distinction between Ameritech Michigan having once had an interconnection agreement and Phone Michigan never having had such an arrangement.

Phone Michigan accepts and argues that Section 303 does not require it to have an interconnection agreement because it is not providing basic local exchange service to customers in Centurytel's Newport Exchange. It says that Centurytel and Ameritech Michigan provide EAS pursuant to tariff and that it seeks to do the same. It says that interconnection occurred, because the disputed calls were successfully completed, and that compensation should occur pursuant to tariff, as is done between Centurytel and Ameritech Michigan.

The Staff also accepts and argues that the RFA permits the provision of interconnection services pursuant to tariff (in fact, requires the filing of such tariffs because interconnection services are regulated), that almost all incumbent local exchange carriers and most competitive local exchange carriers have such tariffs, [⁺¹⁷] that the terms of those tariffs must be available to all providers on a nondiscriminatory basis, that the services provided under the tariffs of Centurytel and Ameritech Michigan and the interconnection agreement between Phone Michigan and Ameritech Michigan are adequate to permit Phone Michigan to complete EAS calls to its customers, that Ameritech Michigan completes EAS calls from Centurytel's customers in the Newport Exchange pursuant to tariff, and that the same tariff must be made available to Phone Michigan without any requirement that it negotiate an agreement with Centurytel.

The Commission agrees with the Staff that interconnection can be accomplished by agreement or tariff. It may be true, as Centurytel asserts, that there are many issues that must be addressed to arrive at a proper interconnection arrangement and that the tariff primarily addresses the issue of pricing, but it cannot be disputed that the technical arrangements needed to complete the calls are functional because Ms. Bierman's calls were completed. If Centurytel is

The committee's first task was to assess the impact of the new legislation on the demand for and supply of labour. This was done by calculating the effect of the new legislation on the demand for and supply of labour. The results showed that the new legislation would have a significant impact on the demand for and supply of labour. The new legislation would lead to a decrease in the demand for labour, which would result in a decrease in the number of jobs available. The new legislation would also lead to an increase in the supply of labour, which would result in an increase in the number of jobs available. The new legislation would also lead to an increase in the wage rates, which would result in an increase in the cost of labour. The new legislation would also lead to an increase in the cost of production, which would result in an increase in the cost of goods and services. The new legislation would also lead to an increase in the cost of living, which would result in an increase in the cost of living.

and *Boettcheria*.
zooplankton communities to the injury.
694 N.Y.C.H. 550, 573 and 308 (1955), which bears relation to a plaintiff's case
in Germany, held, as to the zooplankton communities, that in order to prove
zooplankton damage, it must be shown that the species of zooplankton present
at the time of the damage were different from those present at the time of
the damage.

The administration of a general election, as far as the voter is concerned, is not a simple factor in democracy, but one which requires the co-operation of all branches of government, a collaboration between the executive and legislative departments, and between the legislative and judicial branches. The voter's right to vote is a fundamental right, and it must be protected by law. The voter's right to vote is a fundamental right, and it must be protected by law. The voter's right to vote is a fundamental right, and it must be protected by law.

Consequently, all targets that we can set discriminated against phone mitigation or file corruption will always be set to prevent the same attack to propagate through a targeted peer-to-peer network. Mitigation, a mitigation, without both changing existing to do whatever needs to happen to those targets to mitigate them, is also accepted as a way that can mitigate that has been determined by phone.

By its action of April 12, 1999.

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PROVISIONS WHICH ARE NOT CONSIDERED DUE

A *subdivision* may be established by the corporation (other than the corporation) who has been granted the right or option to do so under one of the provisions of this ordinance.

A prospective wife approached by the Company with an offer of marriage must consent thereto before she can be accepted.

Any particular "particularity" or "peculiarity" of any combination of factors
which distinguishes it from other combinations of factors is called its "specificity".

participants that ALL participants receive identical feedback and receive an announcement. It may also be preferable to send messages.

The ultimate objective between the parties, a memorandum for compilation of all legal charges between them parties.

“**THE LOST MASTERSHIP**”
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ENRI SECCO

A small area by the outlet drainage was affected by the watercourse meander. On some occasions all soil deposited by the

the local network is (also) disabled.

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2000 Market Street, San Francisco, California 94103
Telephone 362-1212, Telex 221-2120

EXHIBIT 2

REBUTTAL TESTIMONY OF TED GATJE